

REFERENCE TITLE: **in personam forfeiture; technical correction**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2353

Introduced by
Representative Farnsworth

AN ACT

AMENDING SECTION 13-4312, ARIZONA REVISED STATUTES; RELATING TO FORFEITURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-4312, Arizona Revised Statutes, is amended to
3 read:

4 13-4312. Judicial in personam forfeiture proceedings

5 A. If a forfeiture is authorized by law, it shall be ordered by a
6 court on proceedings by the state in an in personam civil or criminal action
7 pursuant to section 13-2313 or 13-2314 or any other law providing for a
8 forfeiture.

9 B. Any complaint, information or indictment alleging or charging one
10 or more offenses included in section 13-2301, subsection D, paragraph 4 or a
11 violation of section 13-2312, or any other offense giving rise to forfeiture
12 under this title, shall set forth with reasonable particularity property that
13 the state seeks to forfeit pursuant to this section in that action, if any.
14 The court shall allow the allegation that particular new or different or
15 differently described property is subject to forfeiture in an in personam
16 criminal or civil case to be made at any time prior to the date the case is
17 actually tried unless the allegation is filed fewer than twenty days before
18 the case is actually tried, and the court finds on the record that the
19 defendant was in fact prejudiced by the untimely filing and states reasons
20 for these findings, provided that when the allegation is filed, the state
21 must make available to the defendant a copy of any material information
22 concerning the allegation.

23 C. In any proceeding pursuant to this section, the court, on
24 application of the state, may enter any order authorized by section 13-4310,
25 subsection A or take any other action to seize, secure, maintain or preserve
26 the availability of property subject to forfeiture under this title,
27 including a warrant for its seizure, whether before or after the filing of a
28 complaint, indictment or information.

29 D. Notwithstanding subsection E of this section, a temporary
30 restraining order under this section may be entered on application of the
31 state without notice or an opportunity for a hearing if the state
32 demonstrates both that:

33 1. There is probable cause to believe that the property with respect
34 to which the order is sought would, in the event of final judgment or
35 conviction, be subject to forfeiture under this title.

36 2. Provision of notice will jeopardize the availability of the
37 property for forfeiture. A temporary restraining order expires within ten
38 days after the date on which it is entered unless the party against whom it
39 is entered consents to an extension for a longer period or unless after
40 commencing a hearing the court enters or is considering a preliminary
41 injunction.

42 E. Notice of the entry of the restraining order and an opportunity for
43 a hearing shall be afforded to persons known to have an interest in the
44 property, whether or not a temporary restraining order is entered without
45 notice. The hearing, however, is limited to the issues of whether both:

1 1. There is a probability that the state will prevail on the issue of
2 forfeiture and that failure to enter the order will result in the property
3 being destroyed, conveyed, encumbered or further encumbered, removed from the
4 jurisdiction of the court, concealed or otherwise made unavailable for
5 forfeiture.

6 2. The need to preserve the availability of property through the entry
7 of the requested order outweighs the hardship on any owner, interest holder
8 or defendant against whom the order is to be entered.

9 F. A hearing requested by any owner or interest holder concerning an
10 order entered under this section shall be held at the earliest possible time
11 and before the expiration of a temporary order.

12 G. On a determination of liability or the conviction of a person for
13 conduct giving rise to forfeiture under this title, the court shall enter a
14 judgment of forfeiture of the property described in the forfeiture statute
15 alleged and set out in the complaint, information or indictment, as amended,
16 and shall also authorize the county attorney or attorney general, their
17 agents or any peace officer to seize all property ordered forfeited that was
18 not previously seized or is not then under seizure. Following the entry of
19 an order declaring the property forfeited, the court, on application of the
20 state, may enter any order authorized by section 13-4310, subsection A or
21 take any other action to protect the interest of this state or a political
22 subdivision in the property ordered forfeited. The filing of the order of
23 forfeiture in the appropriate public records perfects the interest of the
24 state in the property described in the order as of the earlier of the date of
25 the act or omission giving rise to forfeiture or the date that a notice of
26 seizure for forfeiture or notice of pending forfeiture or racketeering lien
27 was first filed in the records, which entitles the state to all rights of a
28 secured party as to that property in addition to any other rights or remedies
29 of the state in relation to the property. Any income accruing to, or derived
30 from, an enterprise or any interest in an enterprise or other property
31 interest that is forfeited under this chapter is also forfeited from the time
32 of the conduct giving rise to forfeiture. It may be used pending procedures
33 subsequent to a verdict or finding of liability to offset ordinary and
34 necessary expenses of the enterprise or property as required by law or that
35 are necessary to protect the interests of this state or a political
36 subdivision.

37 H. Procedures subsequent to the verdict or finding of liability and
38 order of forfeiture shall be as follows:

39 1. Following the entry of an order of forfeiture under this subsection
40 the clerk of the court shall, and the attorney for the state may, give notice
41 of pending forfeiture to all owners and interest holders who have not
42 previously been given notice, if any, in the manner provided in section
43 13-4307.

44 2. An owner of or interest holder in property that has been ordered
45 forfeited pursuant to such action whose claim is not precluded may file a

1 claim as described in section 13-4311, subsections E and F in the court for a
2 hearing to adjudicate the validity of his claimed interest in the property
3 within thirty days after initial notice of pending forfeiture or after notice
4 under paragraph 1 of this subsection, whichever is earlier.

5 3. The hearing on the claim, to the extent practicable and consistent
6 with the interest of justice, shall be held within sixty days after the order
7 of forfeiture. The court may consolidate the hearing on the claim with a
8 hearing on any other claim filed by a person other than a party or defendant
9 in the underlying action and concerning the same property.

10 4. The hearing shall be held by the court without a jury and conducted
11 in the manner provided for in rem judicial forfeiture actions including the
12 provisions of section 13-4311, subsections ~~J~~ L and ~~K~~ M. In addition to
13 testimony and evidence presented at the hearing, the court shall consider the
14 relevant portions of the record of the underlying civil or criminal action
15 that resulted in the order of forfeiture.

16 5. In accordance with its findings at the hearing, the court may amend
17 the order of forfeiture if it determines that any claimant has established by
18 a preponderance of the evidence that the claimant is an owner of or interest
19 holder in the property if either of the following applies:

20 (a) The state has failed to establish by a preponderance of the
21 evidence that the interest is subject to forfeiture under section 13-4304.

22 (b) The claimant has established by a preponderance of the evidence
23 that the interest is exempt from forfeiture under section 13-4304.

24 I. In order to facilitate the identification or location of property
25 declared forfeited and to facilitate the disposition of filed or subsequent
26 claims pursuant to subsection H, paragraph 2 of this section, the court, on
27 application of the state, may order that the testimony of any witness
28 relating to the property forfeited or alleged to be subject to forfeiture be
29 taken by deposition and that any designated book, paper, document, record,
30 recording, electronic or otherwise, or other material which is not privileged
31 be produced at the same time and place and in the same manner as that
32 provided for the taking of depositions under the rules of civil procedure.